

JAN 07 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

This matter is before the court on petitioner Youssef Hafez Abdelbary's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (Docket Item No. 138).^{*} Upon review of his motion and the record, the court will dismiss the motion without prejudice as premature because Abdelbary has a pending direct appeal.

This is Abdelbary's second motion under § 2255 following his jury convictions of various crimes involving fraud and money laundering. On March 19, 2012, the court dismissed Abdelbary's first motion without prejudice because he had a pending direct appeal. (Docket Item No. 99) The Fourth Circuit ultimately remanded the case for resentencing, United States v. Abdelbary, No. 11-4910 (4th Cir. Oct. 31, 2012), which the court did. Abdelbary then appealed the Amended Judgment, and that appeal is still pending. See United States v. Abdelbary, No. 13-4083 (4th Cir. filed Feb. 5, 2013).

In the presence of a pending direct appeal and in the absence of any alleged extraordinary circumstances, the court dismisses Abdelbary's present § 2255 motion without prejudice for the same reasons stated in the court's March 19, 2012 Memorandum Opinion.

* Abdelbary's current motion appears to be substantially identical to his previous § 2255 motion (Docket Item No. 98).

The Clerk is directed to send copies of this memorandum opinion and accompanying order to the petitioner.

ENTER: This 7/1 day of January, 2014.



UNITED STATES DISTRICT JUDGE